IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.65 of 2004

IN

SUIT NO.16 OF 2004

Kamal Gilani. ...Plaintiff

vs.

1.Subhi Construction Pvt.Ltd.
and others. ...Defendants.

Mr.A.Y.Bookwala with G.C.Mohanty i/b. Kirit N. Damania & Co., for Plaintiff.

Ms.Chandana Salgaonkar-Radia i/b. Mayur Narendra & Co., for Defendant nos.1 to 3.

Mr.H.Toor i/b. M.B.Malkan, for Defendant nos.11 & 12.

Mr.Ruchi Tolat i/b. Pankaj Shah, for Defendant nos.4 to 8.

CORAM: D.K.DESHMUKH,J.

DATED: 20th April, 2006.

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The suit is filed by the plaintiff for

specific performance of the agreement for sale. It is alleged in the suit that there is a concluded agreement for sale in favour of the plaintiff. Admittedly, the said agreement is an oral agreement. Even according to the plaintiff, the terms were agreed but they were admittedly not reduced to writing. According to the plaintiff, because there was concluded agreement for sale entered into between the plaintiff and the Directors of defendant no.1, before the public notice was issued, the plaintiff has also paid Rs.11,00,000/- (Rupees Eleven lakhs only) to the defendant no.9. According to the plaintiff, the plaintiff has also issued a public notice which was published in the newspapers on 15.11.2001 and the defendants did not raise any objection to that notice immediately. What is to be seen here is that though the plaintiff claims that he had concluded agreement for sale in his favour and therefore, a public notice which was published in the newspapers on 15.11.2001 was issued, it appears that the defendant no.1 addressed a letter to the Advocate for plaintiff dated 6.12.2001 wherein it is specifically mentioned that the letter is being

written with reference to “without prejudice negotiations for sale of shares by Subhi Construction Pvt.Ltd.”. This letter is replied to on behalf of the plaintiff. The reply is dated 18.12.2003. In the reply there is no grievance made that when there is concluded agreement between the parties to sell the property, why in the letter it is mentioned that it is only “without prejudice negotiations” between the parties. Had there been a concluded agreement between the parties the plaintiff would have definitely raised an objection because the defendant described the transaction between the parties as merely “without prejudice negotiations”. This, to my mind, indicates that when the public notice was issued in November,2001, there was no concluded contract between the parties and only negotiations were going on. It is also possible that part payment was made by the plaintiff during the course of negotiations in anticipation of the agreement. Thus, it prima facie appears that there is no concluded agreement in favour of the plaintiff. It is further to be seen that it is an admitted position that when the alleged agreement took place between the parties

the land in question was a open plot. Now admittedly, a multi-storied building has been constructed on the land and therefore, admittedly there is substantial change in the situation. Considering that the grant of decree of specific performance of the contract is in the discretion of the Court, in my opinion, prima facie it cannot be said that the plaintiff in this situation would be entitled to get decree of specific performance of the Contract. Therefore, as the plaintiff does not have any prima facie case in his favour, the plaintiff would not be entitled to any interim relief, as granting of any interim relief to the plaintiff would result in locking up of the valuable property of the defendants. The notice of motion is therefore, disposed of.

2. At the request of the learned Counsel appearing for plaintiff, the ad-interim order which is presently operating and in field for long time, is continued for a period of Eight weeks.

...